

Bill No. CS for SB 1164, 1st Eng.

Amendment No. Barcode 332882

CHAMBER ACTION

Senate

House

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Senator Lee moved the following amendment:

Senate Amendment (with title amendment)

On page 4, line 3 through page 7, line 15, delete those lines

and insert:

Section 2. Private property rights and regional reservoirs.--

(1) The Legislature finds that construction of a regional reservoir designed to store more than 10 billion gallons of water may inordinately burden nearby real property because of the proximity of the reservoir and may result in a loss of value for the property owner. Therefore, a regional water supply authority, serving three or fewer counties, that is authorized to construct, operate, and maintain such a regional reservoir shall be deemed a governmental entity under section 70.001, Florida Statutes, the Bert J. Harris, Jr., Private Property Rights Protection Act, for purposes of this section.

(2) This section provides a cause of action for the

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1 actions of a regional water supply authority, in siting and
2 constructing a reservoir as described in subsection (1), that
3 may not rise to the level of a taking under the State
4 Constitution or the United States Constitution. This section
5 may not necessarily be construed under the case law regarding
6 takings if the action of a regional water supply authority
7 does not rise to the level of a taking. The provisions of this
8 section are cumulative and do not abrogate any other remedy
9 lawfully available, including any remedy lawfully available
10 for the actions of a regional water supply authority that rise
11 to the level of a taking. However, a regional water supply
12 authority may not be liable more than once for compensation
13 due to an action of the regional water supply authority that
14 results in a loss of value for a subject real property.

15 (3) Each owner of real property located within 10,000
16 feet of the the center of the footprint of a regional
17 reservoir, as described in subsection (1), or 5,500 feet from
18 the exterior of the berm of such reservoir, may present a
19 claim for compensation in writing to the head of the regional
20 water supply authority on or before December 31, 2004, for a
21 loss in property value resulting from the proximity of the
22 reservoir. For each claim presented under this section,
23 section 70.001, Florida Statutes, applies, except when there
24 is conflict with this section, the provisions of this section
25 shall govern.

26 (a) The property owner must submit along with the
27 claim a bona fide, valid appraisal that supports the claim and
28 demonstrates the loss in fair market value to the real
29 property.

30 (b) A claim under this section shall be presented only
31 to the regional water supply authority that is authorized to

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1 construct, operate, and maintain the reservoir.

2 (4) The Legislature recognizes that construction and
3 maintenance of a regional reservoir may not necessarily
4 interfere with allowable uses of real property near the
5 reservoir. However, the siting and construction of the
6 reservoir may result in an actual loss to the fair market
7 value of real property located within 10,000 feet of the
8 center of the footprint of the reservoir, or 5,500 feet from
9 the exterior of the berm, because of the proximity of the
10 reservoir. Therefore, any offer of compensation by the
11 regional water supply authority shall be based solely on the
12 loss of value for the property owner as a result of the
13 proximity of the reservoir and not on the effects the
14 reservoir has on existing uses or on a vested right to a
15 specific use of real property.

16 (a) Notwithstanding section 70.001, Florida Statutes,
17 the regional water supply authority to whom a claim is
18 presented shall, not later than 180 days after receiving such
19 claim:

20 1. Make a written offer to purchase the real property
21 if there is more than a 50-percent loss in value to the real
22 property as a result of the proximity of the reservoir and if
23 the property owner is a willing seller;

24 2. Make a written offer to purchase an interest in
25 rights of use which may become transferable development rights
26 to be held, sold, or otherwise disposed of by the regional
27 water supply authority; or

28 3. Terminate negotiations.

29 (b) An offer by the regional water supply authority to
30 purchase the property in fee or purchase an interest in rights
31 of use under this section shall cover the cost of the

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1 appraisal required in subsection (3).

2 (5) During the 180-day period, unless the property
3 owner accepts a written offer for purchase pursuant to
4 subparagraph (4)(a)1. or 2., the regional water supply
5 authority shall issue a final decision stating that:

6 (a) The real property has a loss in value due to an
7 inordinate burden on the property resulting from the proximity
8 of the reservoir and the regional water supply authority and
9 property owner cannot reach agreement on the amount of
10 compensation; or

11 (b) The property owner has failed to establish a basis
12 for relief under the provisions of this section and section
13 70.001, Florida Statutes.

14
15 Failure of the regional water supply authority to issue a
16 final decision as required by this subsection shall cause the
17 written offer or termination of negotiations required in
18 subsection (4) to operate as a final decision. As a matter of
19 law, this final decision constitutes the last prerequisite to
20 judicial review of the merits for the purposes of the judicial
21 proceeding provided for in section 70.001, Florida Statutes.

22 (6) The circuit court, for purposes of this section,
23 shall determine whether, considering the written offer and
24 final decision, the regional water supply authority has
25 inordinately burdened the subject real property. Following a
26 determination that the regional water supply authority has
27 inordinately burdened the real property, the court shall
28 impanel a jury to determine the total amount of compensation
29 to the property owner for the loss in value due to the
30 inordinate burden to the subject real property.

31 (7) Pursuant to section 70.001, Florida Statutes, the

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1 court may award reasonable costs and attorney's fees and the
2 court shall determine the amount. If the court awards the
3 property owner reasonable costs and attorney's fees, the costs
4 shall include the cost of the appraisal required in subsection
5 (3).

6 (8) This section is repealed effective January 1,
7 2005. However, the repeal of this section shall not affect a
8 claim filed on or before December 31, 2004.

9 Section 3. If any provision of this act or the
10 application thereof to any person or circumstance is held
11 invalid, the invalidity does not affect other provisions or
12 applications of this act which can be given effect without the
13 invalid provision or application, and to this end the
14 provisions of this act are declared severable.

15
16 (Redesignate subsequent sections.)

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19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 On page 1, lines 19-26, delete those lines

22
23 and insert:

24 regional water supply authority that
25 constructs, operates, and maintains the
26 reservoir; providing requirements for the offer
27 of compensation by a regional water supply
28 authority; providing for judicial review under
29 the Bert J. Harris, Jr., Private Property
30 Rights Protection Act; providing for an award
31 of costs and attorney's fees; providing for

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1 future repeal of the section; providing
2 severability;
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